[LOGO] **U.S. Department of Justice**

Civil Division

Tel: (202) 307-6288
Fax: (202) 514-8640

Washington, D.C. 20530

June 23, 2000

BY FACSIMILE AND U.S. MAIL

Mark L. Horwitz, Esq.
Horwitz & Fussell
17 East Pine Street
Orlando, Florida 32801

Re: F. Lee Bailey v. United States;
Fed. Cl. No. 96-666C

Dear Mr. Horwitz:

This letter responds to your letter dated June 20, 2000. Pursuant to the directions issued by the Court at the Monday, June 19, status conference, you describe the topics or matters you plan to inquire by deposition of Mary Lee Warren, Deputy Assistant Attorney General, Criminal Division, in addition to the authority to contract issue which was previously raised. The additional topics mentioned in your letter are Ms. Warren's knowledge regarding:

> " . . . the conduct of Mr. Bailey in relation to his efforts in the liquidation, preservation and repatriation of assets in relation to Mr. Duboc[;]"

and

> " . . . the assets and/or Mr. Bailey's efforts on behalf of the government, and any benefits flowing to the Government as a result of Mr. Bailey's efforts."

Initially, several comments are appropriate. First, we note that your reference to "assets" is vague and does not discriminate between those assets of Mr. Duboc which were handled by Mr. Bailey and those which were not. As you know, the government previously has objected to plaintiff's discovery requests that seek information about Mr. Duboc's assets which were not handled by Mr. Bailey.

Similarly, you make no distinction about whether this inquiry about assets would relate to a period in time before or after Mr. Bailey was no longer Mr. Duboc's attorney. The government has objected upon that ground as well to plaintiff's discovery requests. We are willing, as you know, to provide information regarding matters which occurred after Mr. Bailey was no longer Mr. Duboc's attorney provided it is otherwise relevant. Your letter, however, does not make that distinction.

Finally, with regard to your intention to depose Ms. Warren about "benefits," your letter subsequently states that "[i]n discussing the issues of benefits to the government, obviously the government's receipt of assets and sharing of those assets with foreign governments has an impact on the benefits realized by the government." This formulation amounts to an attempt to get through the back door what you cannot get through the front door. Specifically, as was mentioned at the June 19 status conference, plaintiff desires to inquire into whether the United States shared proceeds with foreign governments because of its belief that the United States Attorney's

Office for the Northern District of Florida used Mr. Bailey to avoid obligations under international treaties. This matter is plainly irrelevant to the issues in this litigation, and we have previously objected. Your formulation in your June 20 letter clearly affords sufficient latitude to inquire in this regard. Moreover, plaintiff is fully aware that the United States had approached officials of the government of France about Mr. Duboc's assets within two weeks of Mr. Duboc's entry of a guilty plea in May 1994.

Notwithstanding these problems with your description of the areas you wish to inquire of Ms. Warren, without elaboration, you contend that these matters are "relevant and may lead directly to admissible evidence or may develop facts which when explored will lead to relevant evidence." Specifically, and again with no or little elaboration, you indicate these matters relate to the issues of "authority to contract, as well as the actual or implied contract with the government, and benefits flowing to the government."

We disagree. The standard is whether inquiry into these matters (the "assets," what Mr. Bailey did with regard to Mr. Duboc's assets, "benefits flowing to the government as a result of Mr. Bailey's efforts") are relevant or are reasonably calculated to lead to the discovery of admissible evidence. The principal issues in the litigation are what were the terms of the arrangement, if any, between Mr. Bailey and the United States, specifically with respect to the disposition of the Biochem Pharma stock, and the question regarding the authority to contract. None of these areas that plaintiff wishes to inquire of Ms. Warren are relevant to those principal issues nor

likely to lead to the discovery of evidence which will make either more or less likely any of the facts in dispute about these principal issues. That is, inquiry into what happened with various assets (aside from Biochem Pharma stock), what Mr. Bailey did with the assets to repatriate them, and what "benefits flow[ed] to the United States" because of Mr. Bailey's efforts do not relate nor shed any insight into what the parties understood was to happen with the Biochem Pharma stock or the authority to contract issue.

Finally, your reliance upon *Janowsky v. United States*, 133 F.3d 888 (Fed. Cir. 1998) (trial court erred in dismissing implied-in-fact contract claim without considering whether the agency ratified the proposed contract by allowing a sting operation to continue and by receiving benefits from it) relates to the issue of contract authority. It does not add to the relevance of the matters discussed above. Plaintiff has been able, and may continue, through other depositions to establish what proceeds the United States realized from Mr. Duboc's assets. Nor has the United States ever suggested it has not received proceeds from Mr. Duboc's assets. No reason exists to further inquire of Ms. Warren, other than that this represents plaintiff's use of a "benefits" Trojan horse to ask what proceeds have been shared with foreign governments which is irrelevant to this litigation.

Please call me if you have any questions.

Sincerely,

/s/ Terry M. Petrie
by Susan [Illegible]
TERRY M. PETRIE
Attorney
Commercial Litigation Branch